



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

September 29, 1992

Ms. Georgia D. Flint
Commissioner
Texas Department of Insurance
P. O. Box 149104
Austin, Texas 78714-9104

Open Records Decision No. 608

Re: Whether article 1.10D of the Texas Insurance Code renders information acquired by the Insurance Fraud Unit of the Department of Insurance confidential under the Texas Open Records Act (RQ-414)

Dear Commissioner Flint:

The State Board of Insurance has received a request under the Open Records Act, article 6252-17a, V.T.C.S., for any complaints filed against certain insurance companies. You contend that the bulk of this information is protected under section 3(a)(1) of the Open Records Act, in conjunction with article 1.10D, section 5(a) of the Insurance Code, because the information is being used by the Insurance Fraud Unit in continuing inquiries with regard to these companies. Section 3(a)(1) of the Open Records Act excepts from public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The commissioner is granted certain discretion under article 1.10D, section 5(a) of the Insurance Code to declare "[a]ny information or material acquired by the department that is relevant to an inquiry by the insurance fraud unit . . . not a public record." You have therefore requested that this office determine the scope of article 1.10D's confidentiality provision with respect to the requested information.

Section 5(a) of article 1.10D of the Insurance Code, added by Acts 1991, 72d Leg., ch. 242, § 4.01, and effective as of September 1, 1991, provides:

Any information or material acquired by the department that is relevant to an inquiry by the insurance fraud unit is not a public record for as long as the commissioner

considers reasonably necessary to complete the investigation, protect the person under investigation from unwarranted injury, or serve the public interest. The information or material is not subject to a subpoena by another governmental entity, except a valid grand jury subpoena, until released for public inspection by the commissioner or, after notice and a hearing, a district court determines that the public interest and any investigation by the commissioner would not be jeopardized by obeying the subpoena.

The legislature's intent to except information or material relevant to an inquiry by the Insurance Fraud Unit from public disclosure under the Open Records Act is clear from the plain meaning of the statutory language. The decision of the commissioner as to whether such material should remain confidential controls here. If the commissioner asserts that particular, identified records must remain confidential for any or all of the three statutory reasons given -- "to complete the investigation, protect the person under investigation from unwarranted injury, or serve the public interest" -- this office is not permitted by the statute to go behind that assertion.


Since the statute by its terms renders information confidential if it is "relevant to an inquiry by the insurance fraud unit," without specifying that such information must have been originally compiled by the unit, we agree that it is irrelevant whether certain information was originally compiled before the enactment of article 1.10D. The confidentiality provision refers explicitly to "[a]ny information or material acquired by the department," and does not limit itself to information acquired after the enactment of the statute.

In the instant case, the commissioner has asserted that the materials sought are relevant to an ongoing investigation of the named insurance companies by the insurance fraud unit. Such materials are therefore subject to the confidentiality provisions of article 1.10D of the Insurance Code; they are, accordingly, "information deemed confidential" by statutory law, and excepted from release under section 3(a)(1) of the Open Records Act. Because we resolve this question under section 3(a)(1), we do not address your further contentions that these materials are also excepted under sections 3(a)(3), 3(a)(7), and 3(a)(11).

S U M M A R Y

Materials and information acquired by the Department of Insurance which are relevant to an inquiry by the Insurance Fraud Unit, and which the Commissioner of Insurance determines must remain confidential for any of the statutory reasons listed in article 1.10D, section 5(a) of the Insurance Code, are excepted from public disclosure under section 3(a)(1) of the Open Records Act, as "information deemed confidential by law."

Very truly yours,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive, flowing style.

DAN MORALES
Attorney General of Texas

WILL PRYOR
First Assistant Attorney General

MARY KELLER
Deputy Assistant Attorney General

RENEA HICKS
Special Assistant Attorney General

MADELEINE B. JOHNSON
Chair, Opinion Committee

Prepared by James Tourtelott
Assistant Attorney General